

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT :	Mordaunt, <i>et al.</i>	CONFIRMATION NO. :	1396
SERIAL NUMBER :	10/531,691	EXAMINER :	Nguyen, Dung T.
FILING DATE :	April 23, 2007	ART UNIT :	2828
PATENT NO. :	7,873,083	ISSUE DATE :	January 18, 2011
FOR :	SYSTEM, METHOD, AND APPARATUS TO PROVIDE LASER BEAMS OF TWO OR MORE WAVELENGTHS		

Via EFS

**REQUEST FOR RECONSIDERATION OF PATENT TERM INDICATED  
ON FACE OF PATENT UNDER 37 C.F.R. §1.705(d)**

U.S. Patent No. 7,873,083 issued on January 18, 2011 from the above referenced application. The face of the patent indicates that the patent term adjustment is 823 days. Applicants hereby respectfully request reconsideration of the patent term adjustment. Specifically, Applicants believe that the total patent term adjustment should be 824 days.

In support of this request, Applicants submit the following statement of facts pursuant to 37 C.F.R. §1.705(b).

- (i) The adjustment under 35 U.S.C. §154(b)(1)(A), for failure of the Office to take certain actions within specified time frames, is 391 days.
- (ii) The reduction of patent term under 35 U.S.C. §154(b)(2)(C), for Applicants' failure to engage in reasonable efforts to conclude prosecution of the application, is 182 days.
- (iii) The correct patent term adjustment calculated under 35 U.S.C. §154(b)(1)(B) is 615 days, due to the failure of the Office to issue a patent within three years after the date on which the application was filed, but not including any overlap with the period in (i).

This application is a national application of International Application No. PCT/US2003/29132. The international filing date is October 16, 2003. The filing date used to calculate the patent term adjustment under 35 U.S.C § 154(b)(1)(B) is April 17, 2005, which is 30 months from the priority date of October 17, 2002 (a Chapter II Demand was filed in this application).

The filing date of this application is April 17, 2005; the patent issued on January 18, 2011. Under §154(b)(1)(B), the patent should have issued on or before April 17, 2008, a delay of 1006 days (the period from and including April 18, 2008, which is the date that is the day after the three year anniversary of filing, to the issue date, January 18, 2011). The 391 days of Office delay for failure to mail an action within fourteen months of the 371(c) date (period June 24, 2008 to and including February 24, 2009) and failure to mail an action within four months of a response by Applicants (period August 27, 2010 to and including January 18, 2011) overlaps with this period.

The adjustment sought under 37 C.F.R. §1.703(f) is the sum of the non-overlapping periods under §154(b)(1)(A) (391 days) and §154(b)(1)(B) (615 days), less the delays attributable to Applicants (182 days), or 824 days.

According to the Federal Circuit's ruling in *Wyeth v. Kappos* ("Kappos"), no overlap can occur between the §154(b)(1)(A) and §154(b)(1)(B) periods before the time that is 3 years after the filing date of the application in the United States ("the 3-year mark"). This is because the period of §154(b)(1)(B) does not begin until the 3-year mark. Applicants have used the sum of the non-overlapping periods of §154(b)(1)(A) and §154(b)(1)(B), in accordance with the meaning of "overlap" as defined by the by the Federal Circuit in *Kappos*, to calculate the patent term adjustment due for this application.

Applicants note that the above-identified application is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. §1.704, other than the circumstances of record.

In summary, Applicants respectfully request an adjustment of patent term under 37 C.F.R. §1.703 to indicate a total PTA of **824** days. Pursuant to 37 C.F.R. §1.705(d) and §1.18(e), the fee required for filing this application for patent term adjustment is believed to be **\$200.00**. Please charge the required fee, and any additional fees due, or credit any overpayment of same, to Deposit Account No. **50-0311**, Customer Number **30623**, Attorney Docket No. 35678-609N01US.

Respectfully submitted,

Date: March 17, 2011

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